

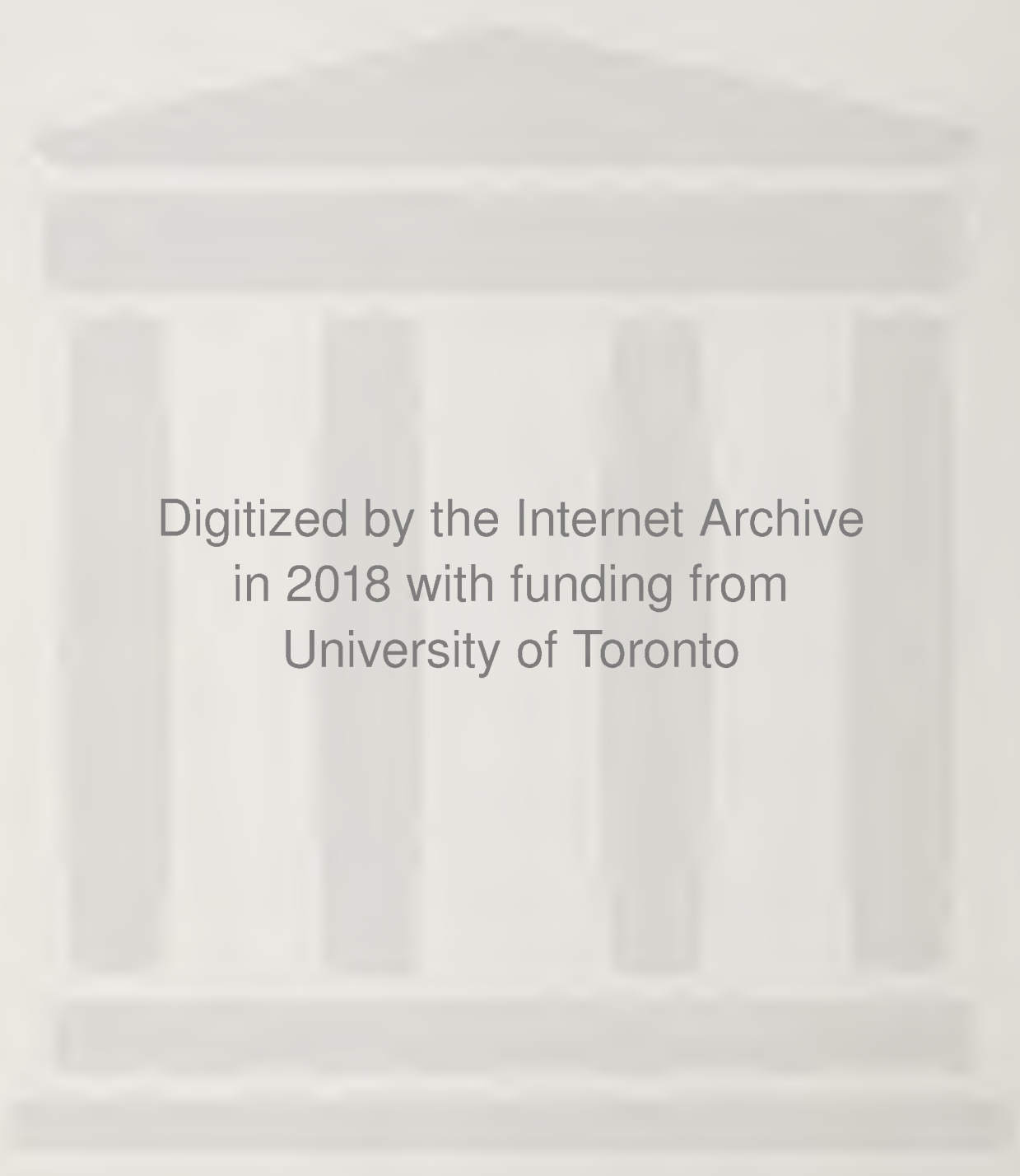


THE LAW AND

COMPUTERS

VOL. I

1984



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THE LAW AND COMPUTERS

MATERIALS - 1984

Compiled by

Daniel G. Cooper

Thomas G. Heintzman

Richard B. Austin

and

Wendy M. Matheson

Volume I

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for teaching purposes at the Faculty of Law,
University of Toronto and are not intended for
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THE LAW AND COMPUTERS 1984

Volume One:

Introduction
Preface
Introduction to Computer Technology

- Session 1 The Information Revolution [to explore the socio-economic impacts of the information revolution]
- A. Introduction
 - B. Employment Debate
 - C. The Necessary Response: An Industrial Strategy?
 - D. The Role of Law
- Session 2 The Technology and its Industries [an outline of the technology of automation and a survey of the participants in the industry and modes of marketing]
- A. Overview of the Industry Structure
 - B. Marketing
- Session 3 Private and Public Law Perspectives [explore concept of information as "property", a "resource", a "commodity"; appropriateness of property-oriented models for "ownership" of information]
- A. The Nature of Information
 - B. Proprietary Rights in Information
 - C. Equitable Obligations of Good Faith
- Session 4 Industrial Property Perspectives I [explore protection of information through the law of trade secrets; breach of confidence]
- A. Definition of Trade Secret
 - B. Historical Development of Trade Secret Law
 - C. Common Law Protection
 - D. Legislative Reform
- Session 5 Industrial Property Perspectives II [explore protection of software and data bases through patent and copyright law]
- A. Patent
 - B. Copyright
 - C. Overall Protection

Volume Two:

- Session 6 Information and Data Bases [explore issues of handling of data and legislative restrictions on its use; privacy; freedom of information; trans-border data flow]
- A. The Right of Privacy
 - B. Freedom of Information
 - C. Trans-border Data Flow
- Session 7 Contracting for System Usage [explore methods and structures for distribution of hardware and software products; antitrust constraints]
- A. Distribution Methodologies
 - B. Contracting for System Usage
 - C. Statutes
- Session 8 Special Contracting Situations [explore issues relating to software development, multiple vendors, international transactions]
- A. Software Development Contracts
 - B. Service Bureau Contracts
 - C. Multi-Vendor Agreements
- Session 9 Taxation Issues [review nature of software under taxing statutes, including income tax, provincial sales tax, customs duties, withholding taxes]
- A. Income Tax Considerations
 - B. Retail Sales Tax
 - C. Federal Sales Tax
 - D. Customs Duty

Volume Three:

- Session 10 Remedies [explore applicability of tort principles such as misrepresentation, detrimental reliance, Hedley Byrne principles, products liability, liability for failure to use technology; contract issues such as fundamental breach and implied warranty]
- A. Contract Remedies
 - B. Tort Remedies

Session 11 The Litigation Perspective [explore law of evidence in relation to computer-generated business records and computer-based analyses prepared for litigation; litigation support systems]

- A. Computers and the Law of Evidence
- B. Litigation Support Systems
- C. Discovery of Computer-Based Information

Session 12 Criminal Law Perspectives [explore concepts of computer abuse and applicability of criminal sanctions to unauthorized access to systems, taking and copying software and data bases]

- A. The Problem Defined
- B. The Current Law
- C. Justifying the Use of Criminal Law
- D. Proposals for Change

Session 13 Commercial Law Perspectives [the challenge of automating paper-based transactions in fields of banking, securities, land registration and trade]

- A. Electronic Funds Transfer Systems
- B. The Canadian Depository for Securities
- C. Computerized Shipping Documentation

INTRODUCTION

The Law and Computers

1984

1. Nature of the Course

The focus of the course is on the legal issues associated with the use of computers and thus involves an examination of the intersection of computer technology and the traditional subject areas within the field of law. Hands on experience with computers is neither a formal nor a practical pre-requisite. The reading materials for the course provide an introduction to data processing technology that is intended to be sufficient for most purposes.

In addition to its impact upon substantive and procedural law the computer is making its presence felt in the legal environment in such practical applications as legal research and the automation of court functions. As well there is a growing body of literature on topics such as the computer's use in legal decision-making. These topics will not be addressed directly in this course although students may choose, if they wish, to write papers in these areas.

There will be weekly seminar meetings at which the readings for the course will be discussed. Each student, in addition to attending and participating at the seminars, will be expected to undertake a research project.

2. Substantial Research Paper

As a major paper course, a research paper of 25-40 typed pages is required. A list of possible topics will be provided. This list is not meant to be exhaustive however, and students are encouraged to seek approval of other topics in which they have a personal interest.

The paper is due on January 15, 1985.

It must be carefully typed, fully documented and foot-noted and be reasonably free of typographical errors as well as those of syntax, grammar and spelling.

It is to be noted that there is a paucity of scholarly Canadian writing on the legal incidents of computer use. While there is a wealth of excellent American material, and students should not hesitate to make use of its analysis, the substantive differences between Canadian and American law make distinctly Canadian articles desirable. It is hoped that the papers in this course will begin to cure the deficiencies in the literature.

3. Width of Approach

Students will be expected to acquire an appreciation of the issues raised by the computer in the traditional subject areas of the law. This can only be achieved on the basis of a grasp of the substantive principles of law applicable in each area, and it is anticipated that students will invest the time necessary to acquire this grounding. However it is not to be expected that this familiarity will be sufficient to permit

students to provide definitive answers to all the difficult questions associated with the use of computers. Indeed the emerging nature of many of the problems suggests that such solutions may not be presently available or perceivable. In these circumstances students are expected to develop an understanding of the sources of controversy, the possible means of resolution, and the likely consequences of the proffered solutions.

PREFACE

The purpose of these materials is to provide a source book for a discussion of the substantive and procedural legal issues associated with the use of computers.

The material falls into three sections. The first, Sessions I through VI, constitutes the necessary background to any study of the public and private law issues raised by the computer. It begins with a brief description of the technology followed by an introduction to the social and economic impacts of the Information Revolution and a survey of the participants in the data processing industry. The next session examines on a general plane an issue that recurs throughout the course: whether controls on the use of information are best achieved by the ascription of property rights to information, or whether this is better done by way of equitable proscriptions on the use of information. In Sessions IV and V we examine the methods by which the law of intellectual property controls the uses of "information", especially software and data bases, to protect the economic interests of the creators and distributors. The section concludes with an examination of the limits on the handling of data by public law in three areas: privacy; freedom of information; and transborder data flow.

From this general background the materials move to a more particular study of specific legal issues - methods for

the distribution of hardware and software, issues in systems contracts and particular contracting situations, taxation issues, and the applicability of tort principles.

The final sessions are designed to explore in detail the intersection of computers and established bodies of law. Session XI explores both the substantive issues associated with the treatment by the law of evidence of computer-generated records, and the procedural aspects of computer use in the litigation process. Criminal law issues are examined next, specifically the ability of the criminal law to cope with unauthorized access to computer systems and the taking and copying of software. Session XIII discusses the challenge of automating paper-based transactions in the fields of banking, securities and trade.

These materials are somewhat bulky. However four factors should be kept in mind in evaluating their length. First, in a course that is concerned with emerging legal issues, more general readings are to be expected than in a more narrowly focused traditional law course. As well, portraying accurately the nature of an unresolved problem frequently requires more extensive material than is needed to describe settled law. Second, in a major paper course, students must have a sound grasp of the basics before undertaking research on their particular topic. It is anticipated that the readings will constitute a helpful beginning to more specific research while providing a basis for seminar discussion. Third, although there is no

indication that the problems associated with computer use are less severe in Canada than in the United States, scholarly Canadian writings on the legal incidents of computer use are few. Thus it has been necessary to include more extensive readings than might otherwise have been the case to ensure the materials have the requisite Canadian flavour. Finally, the course is somewhat unique among computer law courses offered at Canadian law schools. Certainly the availability of a prepared set of materials distinguishes it from all other such courses offered in Canada.

INTRODUCTION TO COMPUTER TECHNOLOGY

PAGE

CHRISTO, Thomas K., "The Computer as God", <u>Computer Law Reporter</u> , Vol. 1, No. 1, p. 14.	Intro-1
"Dictionary for Computer Literacy", <u>The Globe and Mail</u> , February 28, 1983.	Intro-4
BENDER, David, <u>Computer Law: Evidence and Procedure</u> , New York, 1982, Chapter II.	Intro-6
"Database: Just organized material ready for use", <u>The Globe and Mail</u> , April 29, 1983.	Intro-39

